

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

NEW CENTURY MORTGAGE	)	
CORP.,	)	
	)	Case No.: 05 C 2370
Plaintiff,	)	
	)	Judge Coar
v.	)	
	)	
GREAT NORTHERN INSURANCE	)	
COMPANY, FEDERAL	)	
INSURANCE COMPANY,	)	
	)	
Defendants.	)	

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**DEFENDANTS' GREAT NORTHERN INSURANCE COMPANY'S AND FEDERAL  
INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S MOTION TO FILE  
SUPPLEMENTAL AUTHORITY**

NOW COME the Defendants, GREAT NORTHERN INSURANCE COMPANY ("Great Northern") and FEDERAL INSURANCE COMPANY ("Federal") by and through their attorneys, TRESSLER, SODERSTROM, MALONEY & PRIESS, and in Response to Plaintiff's Motion to File Supplemental Authority In Opposition to Defendants' Motion for Summary Judgment and in Support of its Motion for Summary Judgment, state as follows:

1. The supplemental authority cited by plaintiff, Hooters of Augusta, Inc. v. American Global Insurance Company, No. 04-11077, 2005 U.S. dist. LEXIS 26765 (11<sup>th</sup> Cir. Dec. 6, 2005) involves Georgia law rather than Illinois law.
2. The analytical approach employed by the 11<sup>th</sup> Circuit in Hooters of Augusta was rejected by the Seventh Circuit in American States Insurance Company v. Capital Associates of Jackson County, 392 F.3d 939, 943 (7<sup>th</sup> Cir. 2004) and by the Honorable Judge Robert J. Gettleman in St. Paul Fire and Marine Insurance Company v. Brunswick Corporation and

Brunswick Bowling & Billiards Corporation, Case No. 04 C 7751 (United States District Court for the Northern District of Illinois, November 22, 2005).

3. The instant case also involves several critical defenses that are not addressed in the Hooters of Augusta decision. For example, the insurers have asserted the following additional defenses: (a) plaintiff has not asserted a viable cause of action, (b) the Prior Publication Exclusion bars coverage, (c) the plaintiff has failed to meet its burden of proving that an offense occurred during the relevant policy period, (d) plaintiffs are not entitled to coverage for their donations to charity totaling roughly \$1 million, and (e) the underlying settlement does not arise out of an “occurrence”.

WHEREFORE, Defendants GREAT NORTHERN INSURANCE COMPANY and FEDERAL INSURANCE COMPANY, respectfully contend that the case styled Hooter of Augusta, Inc. v. American Global Insurance Company, No. 04-11077, 2005 U.S. dist. LEXIS 26765 (11<sup>th</sup> Cir. Dec. 6, 2005) does not provide persuasive authority regarding resolution of the motions currently pending before this Court.

GREAT NORTHERN INSURANCE  
COMPANY AND FEDERAL  
INSURANCE COMPANY

By: *s/Daniel J. Cunningham*

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One of Their Attorneys

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COMPANY, FEDERAL	)	
INSURANCE COMPANY,	)	
	)	
Defendants.	)	
	)	

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 16, 2005, I electronically filed Defendants, Great Northern Insurance Company's and Federal Insurance Company's Response to Plaintiff's Motion to File Supplemental Authority with the Clerk of the Court using CM/ECF System which will send notification of such filing(s) to the following:

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GREAT NORTHERN INSURANCE COMPANY

By: /s/ *Kathy Karaboyas Malamis*

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One of Its Attorneys

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